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SUBJECT: A/S POSNER DISCUSSES CAST LEAD INVESTIGATIONS WITH IDF

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Classified By: Charge d'Affaires Luis G. Moreno for reasons 1.4 (b) and (d).

1.(S) Summary: Assistant Secretary for Democracy, Human Rights, and Labor Michael Posner held extensive meetings January 6 and 7 with IDF Chief of Staff LTG Gabi Ashkenazi, J5 Chief Major General Amir Eshel, IDF Southern Commander Major General Yoav Galant, IDF Judge-Advocate General Brigadier General Avichai Mandelblit, Israel Air Force Commander Major General Ido Nehushtan, Strategic Division Command Brigadier General Yossi Heymann, and former IDF intelligence chief BG Yuval Halamish who heads the IDF's Goldstone Committee. The meetings reviewed legal and operational issues related to IDF activities during Operation Cast Lead, as well as specific incidents of alleged Israeli IHL violations during the fighting. Posner's interlocutors agreed that mistakes had been made at times by Israeli soldiers and reported that, although it was too early in the investigatory process to draw firm conclusions, that internal investigations would likely result in accountability for some soldiers involved -- either criminal prosecutions or disciplinary action. They also evinced a willingness to examine operational issues and decisions to determine whether the IDF should adjust its doctrine for fighting in crowded urban areas. Overall, the IDF presented a convincing case that it is dealing seriously with these issues and that the IDF exerts more energy trying to minimize civilian casualties than almost every other military in the world. Because no perfect paradigm exists for fighting a terrorist enemy that deliberately bases itself in crowded civilian areas, IDF senior commanders expressed interest in further detailed discussions with us, and perhaps other friendly countries, on international humanitarian law issues related to this problem. End summary.

12. (SBU) Assistant Secretary for Democracy, Human Rights, and Labor Michael Posner met with senior IDF officials during his visit to Israel. On January 6, A/S Posner met with IDF Chief of Staff LTG Gabi Ashkenazi, J5 Chief Major General Amir Eshel, IDF Southern Commander Major General Yoav Galant, Strategic Division Command Brigadier General Yossi Heymann, and IDF Judge-Advocate General Brigadier General Avichai Mandelblit. On January 7, A/S Posner met with Israel Air Force Commander Major General Ido Nehushtan. U.S. meeting participants included the Ambassador and Embassy Tel Aviv DATT COL Richard Burgess, as well as delegation members Deputy Legal Advisor Robert Harris, Army JAG School Executive Director COL (ret) David Graham, DRL's Multilateral and Global Affairs Office Director Joseph Cassidy, and poloffs.

¶13. (S) During these meetings, A/S Posner stressed the purpose of his visit was to "listen and learn" from Israeli interlocutors, and to confer about how the Government of Israel could most effectively tell its "story" regarding Operation Cast Lead to the international community. He said the United States is attempting to encourage a responsible debate within a complex multilateral landscape, and acknowledged the GOI's concerns regarding biased and disproportionate criticism of Israeli actions during Cast Lead. A/S Posner said Washington understands the distinction between human rights law and international humanitarian law, stressing that the latter is the legal regime applicable to situations of armed conflict such as during the Israeli Cast Lead operation in Gaza. He noted that the United Nations and many state members of the Human Rights Council, however, want to apply human rights law, and not IHL, to the Gaza conflict, which he described as "wrong-headed."

¶14. (S) A/S Posner said the United States understood the complexities of operating in a densely populated area while facing an asymmetric threat. He stressed the importance of changing the public debate to better reflect a changing world in which tough decisions were made in the face of these asymmetric challenges. A/S Posner said responding to the specific allegations contained in the Goldstone Report would be important, but that the GOI could also usefully make clearer the steps it is already taking to examine its operational decisions and rules of engagement. Announcement of a review process that would examine the accountability processes undertaken in Israel for allegations of IHL violations, as well as addressing broader doctrinal issues

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and compilation of lessons learned could help change the debate internationally.

Challenges of Asymmetric Warfare

¶15. (S) Senior IDF officials expressed frustration that world opinion appeared set against Israel, despite the numerous measures the IDF took to protect civilians while facing an enemy that deliberately targeted civilians by basing their operations and hiding articles of war within densely populated urban areas. IDF Chief of Staff LTG Ashkenazi described his job as protecting Israeli civilians, using the most precise weapons possible to take out threats. He argued that terrorists deliberately target Israeli citizens from urban areas because Israel is bound by legal norms that deny the IDF the ability and capability to effectively attack enemy targets. LTG Ashkenazi said Israel will likely face the same asymmetric challenge in the near future while facing the same limitations. J5 Chief Major General Eshel echoed the limitations of a small country such as Israel in facing terrorist threats.

¶16. (S) Air Force Commander Major General Nehushtan lamented the difficulty of conveying to modern civil societies the complexity of non-conventional warfare. He noted that Hamas and Hizballah were targeting civilians from within civilian population centers. The difference, however, was that Israeli citizens were deliberately targeted -- "they know that our citizens are our soft underbelly," Nehushtan and Eshel said. Both Nehushstan and Eshel pointed out that the challenge faced by the United States in protecting Iraqi and Afghan civilians was qualitatively different from the IDF's responsibility to prevent threats to its own citizens. Nehushstan argued that terrorists deliberately chose to target Israeli civilians and hide arms in Palestinian civilian population centers. He said it was difficult to convey "Hamas' twisted logic" of endangering its own civilians, such as when it shelled the border crossings two weeks prior to the Israeli withdrawal from Gaza, knowing that such attacks would cause closures and international outcry. Nehushtan claimed that the Goldstone report made Hamas' strategy successful. He also commented that there were "no

solutions to firing back on those firing from within a civilian population" and rhetorically offered to step down if anyone had a better solution.

¶ 17. (S) MG Nehushtan and MG Eshel also outlined the many measures the IDF took to reduce collateral damage. Eshel said the IDF put more limitations on its operations than any other military -- "we cannot allow ourselves to make some of the mistakes (leading to civilian casualties) that the United States and the United Kingdom have made." Nehushtan noted the IAF's sole use of precision munitions, the accuracy of which was now measured in meters, and the IDF's monitoring of the presence of civilians through real-time video feeds. He cited IAF pilots' authority to use their own judgment on aborting missions, and outlined procedures such as "roof knocking" that seek to encourage civilians to evacuate each targeted building -- a procedure he claimed was not used anywhere else in the world. MG Eshel extolled an atmosphere within the IDF that encourages subordinates to ask questions or even challenge commanding officers if they believed an operation was flawed. In Operation Cast Lead, Nehushtan said the IAF had 99 percent success rate for hitting targets, had destroyed accidentally only one house due to a mistaken target, and required evidence of the evacuation by civilians of all targeted houses before final approval to fire was given. BG Halamish added that the IDF made over 250,000 phone calls to evacuate houses - a process also unprecedented in the world. Nehushtan also noted that the IDF had improved from 1:1 to 1:10 the civilian to terrorist casualty ratio in the past ten years in its attacks on terrorist indirect fire teams, due partly to IDF procedures that call for diverting missiles if the intended targets come near civilians. Nehushtan admitted, however, that IDF artillery and tank units did not follow the same procedures and caused most of the Palestinian civilian casualties in Cast Lead.

¶ 18. (S) MG Nehushtan reviewed the meticulous planning that went into any IAF military operation, in which the distance and damage limitation were measured in meters from a target to surrounding houses. Such targets were selected and approved by only a few commanders based on intelligence,

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while the minimal ordnance possible was used to avoid collateral damage, even if military necessity would otherwise call for a more explosive munition to ensure a target was destroyed. Based on this process, he told of dozens of aborted attacks during Cast Lead, in cases where targets were not approved due to concerns about collateral civilian damage. MG Eshel noted that the IDF was "chasing the worst terrorists on the face of the earth," but in many cases could not act against them due to the presence of civilians. He noted in particular that Ismail Haniyeh's Hamas headquarters were located in the basement of Shifa Hospital, Gaza's largest, because Hamas knew it was safe from IAF attack. The IDF had good intelligence that Hamas was hiding weapons in civilian houses. BG Halamish also commented that the Hamas police force did not carry out police functions, but were a part of the Hamas combat structure.

¶ 19. (S) IDF Judge-Advocate General Brigadier General Avichai Mandelblit noted that the laws of armed conflict were applied carefully to Cast Lead; every operational plan included a legal annex. The only exception from the international armed conflict protections laid out in the Geneva Conventions involved the legal status of Hamas detainees, whom the IDF maintains are not entitled to prisoner of war protections contained in the 3rd Geneva Convention. He confirmed a recent decision by LTG Ashkenazi to include legal advisors "on the ground" at the brigade level. (Comment: This is a significant step, and something the U.S. has been recommending to the IDF for years. Combined with a possible decision to assign humanitarian advisors to unit commanders down to battalion level, this reflects a commitment to providing commanders real-time advice on the humanitarian and

legal ramifications of asymmetrical conflict. End comment.)

Investigations

¶10. (S) LTG Ashkenazi said the IDF began investigating allegations arising from Operation Cast Lead well before the Goldstone Report was published. The IDF wanted to know what had happened and why -- this approach was not unique to Gaza, but was conducted after all IDF operations. He admitted that the IDF had made mistakes, but that Israeli forces had "done their best." He explained the investigative process, including the role of BG Mandelblit and both the Attorney General and, ultimately, Supreme Court oversight. LTG Ashkenazi described the difficult conditions in which IDF forces were asked to operate, featuring friendly fire incidents and unintended civilian casualties -- but in every case, he stressed, the IDF never deliberately attacked a civilian.

¶11. (S) BG Mandelblit provided a status report of Israeli investigations highlighting five specific incidents from Operation Cast Lead cited in the Goldstone Report:

-- January 3 Al-Maqadmah Mosque Incident: Mandelblit said that the initial field investigation was headed by a one-star general. As the initial allegations were that the attack came from an airplane, the investigators used satellite images both before and after the alleged attack to determine whether there had been structural damage to the mosque consistent with an air attack. Not finding any, the initial investigation concluded that there had been no attack. Based on new information contained in the ICRC and in Goldstone reports, Mandelblit reopened the case. The new field investigation found video footage of an unmanned aerial vehicle (UAV) attack against two armed Popular Front operatives who were located at the time immediately outside the mosque. Mandelblit said the UAV fired two missiles against the operatives; the first missile failed, but the second hit the operatives. UAV footage of the strike provides evidence that shrapnel entered the mosque through an open door. While the mosque was not intentionally targeted, Mandelblit said, the shrapnel from the attack hit civilians located inside. Mandelblit said these facts were just recently obtained, and that the investigation was still on-going. The case would be referred to LTG Ashkenazi once the investigation was concluded.

-- Referring to a broader problem, Mandelblit said available intelligence also made clear that a large number of rockets were stored in mosques; secondary explosions following initial strikes on mosques confirmed the presence of these arms. (Note: Posner and delegation were shown video footage

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of an initial explosion inside a mosque, followed by secondary explosions. End note.) Mandelblit said that from a legal perspective, the IDF could attack a mosque if it were used to store rockets and missiles. However, the IDF took precautions even in such cases to attack in the early morning hours when no one was praying at the mosque.

-- January 3-4 Attack on Al-Samouni Family: (Comment: Of the narratives provided by Mandelblit, this was the most complicated, suggesting that the report contained herein may not be entirely correct and complete.) Mandelblit noted three separate investigations regarding this incident; the first was initiated prior to the release of the Goldstone Report. He said the three investigations focused: (1) on the alleged intentional shooting of an Al-Samouni family member after leaving the family's home: the destruction of the family home; and -- most seriously -- 21 deaths resulting from an airstrike. Based on the results of these investigations, Mandelblit said it was becoming clearer that these incidents were connected in a complicated chain of events. He provided a sketch of the incidents, in which the

al-Samouni family evacuated its home and sought refuge in a nearby house. IDF forces in the area suffered an RPG attack, and determined that the attack came from the same house. According to Mandelblit, unknown to the IDF units in the field, the Al-Samouni family and approximately 50 other civilians had taken shelter in the house. A brigade commander authorized an attack against the house -- "making a mistake" -- which resulted in the roof collapsing on some of the civilians inside. Mandelblit said the investigation was still on-going. He said the attack on the civilians was not intentional -- real-time cockpit recordings record a pilot alerting ground troops to the presence of civilians fleeing the house and calling on ground forces to stop shooting. Mandelblit said the case will be referred to LTG Ashkenazi following the investigation's completion, that the IDF would study this case carefully from an operational standpoint for "lessons learned" and that he had reached no conclusions as yet about individual accountability. He noted that he could request additional details or a continued investigation if not satisfied with the results.

-- January 5 incident involving the Abd al-Dayem condolence tents: Mandelblit noted that this incident -- in which a tank allegedly fired flechette shells intentionally at civilians -- is still under criminal investigation. He said that 20 Palestinians provided testimony; one of the Palestinians concurred with IDF soldiers' statements that the area was filled with Hamas rocket launch teams. None of the Palestinians apparently saw a tank aiming at the tents. According to Mandelblit, the IDF confirmed the use of two flechette shells in a "relatively open area" against rocket launch teams. He said that the IDF participants said that they did not see any tents. He acknowledged a timing discrepancy of about thirty minutes regarding Palestinian testimony and the IDF's use of the flechette shells -- but according to the IDF, these were the only flechettes used during the date in question.

-- January 5-7 Majdi Abd Rabbo human shield case: Mandelblit confirmed that this criminal case involving alleged human-shielding was still on-going. According to the investigation, the civilian in question owned a house sharing a wall with his neighbor's house in which Hamas operatives were allegedly hiding. When it became apparent that IDF forces intended to break down the adjoining wall to engage the terrorists, the civilian pleaded with the IDF to use a door on the second floor connected to his neighbor's house. IDF forces feared the door was booby-trapped, so, to avoid IDF damage to his house, the civilian volunteered to enter his neighbor's house to determine if indeed Hamas operatives were present. He returned and confirmed such was the case, noting that the terrorists told him they would kill him if he returned. When the IDF forces prepared to break down the wall to attack the terrorists, the civilian again asked to talk to the terrorists rather than face damage to his home. A fire-fight ensued, and the house was eventually destroyed by a D-9 bulldozer. Mandelblit did not believe the case amounted to egregious human-shielding in the traditional sense of the term, but argued that the officers responsible for allowing the civilian to enter his neighbor's house the second time should be held accountable for violating a decision of the Israeli Supreme Court. He said it would have been much easier and less risky for the unit to ignore the neighbor's concern for his house from the beginning rather

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than end up with a story that is now being interpreted as use of a human shield. He confirmed that the GOI prohibited the use of human shields; prior incidents resulted in courts martial.

-- January 3-21 destruction of the Sawafeary Chicken Farm: Mandelblit said the investigation was on-going, but intelligence confirmed significant tunnels and weapons used for military purposes underneath the chicken farm. He acknowledged issues involving the farm's destruction and

proportionality, and said it was not yet clear if the owners of the farm were involved with Hamas.

¶12. (S) Mandelblit also provided information on several other incidents cited in the Goldstone Report:

-- "Before and after" photos demonstrated that the El Bader flour mill was not destroyed. Mandelblit said an IDF tank had targeted Hamas operatives on the upper floor of the mill; the pictures showed that only one part of mill had been attacked. The Goldstone Report's assertion that IDF aircraft had targeted the mill's machinery was not true.

-- According to photos taken before the attack on the Namar water wells, a Hamas military compound existed at the site which included the water wells. Mandelblit said the Hamas military compound was the target -- not the water wells -- and that the IDF operational plan included measures to ensure that water wells located outside the compound were not affected.

-- Mandelblit confirmed there was no IDF aerial attack against the Gaza waste water treatment plant, and that the damage incurred by the plant's sewage retaining wall (22 meters wide and 5 meters deep) was not consistent with an aerial strike. He posited that Hamas intentionally blew up the plant to flood the surrounding area to make it impassable for tanks, something the IDF would have no interest in doing as it limited tank movements.

-- Mandelblit also mentioned the attack on a family home near the UNWRA school on al-Fakhura Street, noting that the owners of the house in question were associated with Hamas and stored rockets in the basement. According to Mandelblit, the IDF did not attack Hamas leadership if children were present; in this case, the IDF warned the family, the family evacuated the house, and the IDF struck the house.

-- Mandelblit said he was not satisfied with the field investigation involving the incident at the Al Quds hospital, and sent it back for further details.

¶13. (S) Mandelblit said the IDF would publish the results of these investigations by the end of the month, including a critique of the Goldstone Report on how Goldstone took Hamas at its word on all of these investigations. Overall, he confirmed that the IDF has investigated every allegation in the Goldstone Report, in addition to another 140 incidents which took place during Cast Lead.

Getting the Israeli Story Out

¶14. (S) A/S Posner asked how the GOI planned to convey the investigation results to a larger audience. Getting others to review and endorse the Israeli narrative would be important; while the Goldstone Report was a fundamentally flawed report, it had a certain credibility internationally. He asked for IDF commanders' views about a broader review by a prominent Israeli group apart from the IDF to validate its investigations. Ambassador Cunningham said the objective was not to appease the international community, but to dilute the poisonous effects of the Goldstone Report. He noted a great deal of skepticism among many in the international community regarding the Goldstone Report, but with no credible alternative narrative, the Goldstone allegations would be the focus of deliberations. The Ambassador stressed the importance of getting the word out employing a variety of means -- perhaps YouTube or other outlets afforded the opportunity to help re-tell the story.

¶15. (S) LTG Ashkenazi said the GOI was "under attack" by international media. He noted that Israel had tried to "share its problems," and be transparent by sharing information with the UN, Red Cross, and other human rights

organizations -- especially since Israel might again be faced with a similar conflict in the near future. LTG Ashkenazi argued that the IDF's internal field investigation was the most crucial procedure in the investigative process, as it was the time in which a soldier or commander would feel comfortable speaking at length about incidents.

¶16. (S) In that respect, LTG Ashkenazi said the IDF must go to the media and publish a concise, effective story, with tangible evidence. He said the IDF essentially had three challenges: 1) proving the GOI did not intentionally target civilians; 2) demonstrating that the Goldstone Report investigators lacked professional competence by contrasting that report with Israel's own; and 3) answering each of the Report's 36 allegations. He noted that a press conference might be most appropriate to share these findings. Overall, Ashkenazi acknowledged the need for a "campaign" in telling Israel's story, not just a one-time effort.

¶17. (S) MG Eshel agreed that a "campaign approach" was essential. He said the IDF will have provided the GOI with the arguments necessary to refute the Goldstone Report, and hoped this would be done openly. However, Eshel was reluctant to endorse an independent review process -- the military possessed the core expertise to investigate incidents arising from its own operations, he said. Granting an independent entity the authority to review such a process undermined the chain of command -- "you must have confidence in the system in place," he said.

¶18. (S) MG Eshel also was skeptical that the Israeli public would understand the purpose behind an outside review process. He noted that there was broad public acceptance in convening committees following controversial military operations such as the Yom Kippur War or the Second Lebanon War. But Operation Cast Lead enjoyed the overwhelming support of the Israeli public -- "no one will understand" why an independent committee would be convened following Cast Lead, he said.

¶19. (S) MG Nehushtan was skeptical that Israel would be able to convert international public opinion, noting limitations regarding media and resources. He focused on the need for democratic states to hold Hamas accountable for shooting rockets from civilian areas -- Hamas cared about legitimacy, and could change its tactics if confronted by a united international community.

¶20. (S) A/S Posner accepted the argument that a military should be responsible for its own investigations and discipline. He reiterated, however, the utility of telling Israel's story from an outside point of view -- independent voices to deliver the message in a way that is credible. As much as the IDF knew about its operations and investigations, many in the international community, even those otherwise positively inclined toward Israel, will approach this cautiously. Posner referred to press reports the GOI might create an independent review process and asked whether that could be done in a way that does not set a precedent, from an IDF point of view. Such a review process with a specific mandate could examine and reaffirm the IDF's investigative process -- thereby telling the Israeli story from a different source.

¶21. (S) Cassidy noted hostile audiences at the Human Rights Council and in other UN fora, and cited the importance of building support in Geneva and New York from countries that might consider fairly Israel's narrative. The goal is not to convince Algeria or Syria -- but there is value in convincing the countries such as the Dutch, Danes, Chileans, Chinese or Russians that terrorist groups such as Hamas and Hizbullah both undermine the values embedded the laws of war and present a strategic threat.

¶22. (S) A/S Posner asked how the IDF would capture "lessons learned," in response to which most of his IDF interlocutors listed a number of operational decisions they would make differently in the next conflict. They acknowledged the need for an internal review focused on doctrinal changes and rules of engagement improvements, such as clarifying the IDF's prohibition against human shields or better disseminating its policies on contact with civilians. Without prompting,

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General Galant volunteered that use of white phosphorus was no longer politically tenable in Gaza for any purpose, even though it remained a legal munition, because of the strategic damage to Israel that would result from news footage showing civilian casualties or damage to civilian structures. Posner said that a review of policies would buttress GOI credibility internationally and elicit greater understanding among some states of the real challenges that democratic states face fighting asymmetrical conflicts with terrorist organizations.

¶23. (S) Mandelblit said that IDF field investigations were similar to those conducted in the United States, with the main purpose focused on "lessons learned" and not only a judicial process to determine individual accountability, though criminal investigations could result. He noted that it was ultimately up to the IDF Chief of Staff to identify "lessons learned." The IDF was under no legal obligation to publish the results of the investigations, but the public expected it, while he had a responsibility to report on the legal ramifications resulting from these incidents.

¶24. (S) LTG Ashkenazi said the IDF did publish its findings and lessons learned. He acknowledged the need to provide IDF commanders with more specific rules of engagement in an urban environment. Mandelblit acknowledged that doctrinal changes would result from "lessons learned," such as taking additional precautions or using only certain kinds of munitions. MG Eshel highlighted the need for better exchanges of information with the United States regarding the use of certain weapons and munitions in urban areas. MG Nehushtan pointed to the need to better document all phases of the operational planning process to build the legitimacy of a selected target, especially when Hamas stores arms in houses or maintains a headquarters within an apartment building. He also said the IDF must improve training with respect to air support for ground forces, since that was particularly subject to difficult choices between protecting the lives of Israeli soldiers and those of civilians in conflict zones. He said he reserved his best officers for the task of approving targeting decisions in such situations, as the risk to ground forces and civilians necessitated such precise and verified targeting coordinates.

¶25. (S) Graham suggested that the Majdii Abd Rabbo case could also provide lessons learned based on interpretations of human shielding; Mandelblit agreed, but said accountability might be more appropriate. Cassidy suggested the need to more clearly identify safe zones for civilians to evacuate to following warnings of an impending attack.

Criminal Investigations/Prosecutions

¶26. (S) A/S Posner recommended the IDF speak clearly about its criminal investigations, explaining how they are conducted and, where appropriate, highlighting prosecutions or disciplinary action. The sole case prosecuted so far, involving credit card theft, was trivial in comparison to the much more serious allegations of IHL violations and did not reflect the comprehensive nature of Israeli investigations. LTG Ashkenazi stressed the importance of enforcing discipline, no matter the circumstances. If investigations resulted in criminal prosecutions, it would not be just in response to public opinion but as a result of the IDF's own rules and values.

¶27. (U) A/S Posner's delegation cleared this cable.

Moreno